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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,157	03/01/2004	Jacob Revivo	27770.036	3408

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EXAMINER	
MCCORMICK EWOLDT, SUSAN BETH	
ART UNIT	**PAPER NUMBER**
1655	

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/791,157	REVIVO, JACOB	
	Examiner	Art Unit	
	S. B. McCormick-Ewoldt	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The amendment of August 5, 2005 is hereby acknowledged and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

It is noted on page 10, lines 20 and 21 of Applicant's response that Applicant states that he "very disrespectfully disagrees with what the Examiner has stated (emphasis added)." Applicant is reminded of 37 CFR 1.3 which states that "Applicants and their attorneys or agents are required to conduct their business with the United States Patent and Trademark Office with decorum and courtesy."

Claims Pending

Claims 1-12 are pending.

Claim Rejections - 35 USC § 112

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claims 1-12, the recitation "blown up foam" is unclear as to the meaning. What is encompassed with this recitation? Clarification is needed.

In claim 12, Applicant has not cancelled the term "slowly" as in the other claims. Correction is needed.

Claim Rejections - 35 USC § 103

Claims 1-12 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Deckers *et al.* (US 2002/0037303 A1) in view of Stavroff *et al.* (US 5,866,145) and Schwartz (US 2002/0012697 A1) as stated in the previous Office action.

Deckers *et al.* (US 2002/0037303 A1) discloses a composition and a method of making comprising avocado oil, jojoba oil, safflower oil ([0078,] and [0079]) and vitamin A palmitate, vitamin B5, vitamin C, vitamin E acetate, vitamin D3 and vitamin K ([0159] and [0163]). In

addition, dimethicone ([0134]) and fragrances ([0139] and [0142]) are used. Deckers *et al.* do not specifically teach using Dead Sea salt or silica in the composition. Applicant's arguments filed August 5, 2005 have been fully considered but they are not persuasive.

Applicant argues that Decker does not show how the plant seeds are used nor provide the order nor the percentages of the present invention to create the result of the present invention. This is not persuasive as shown in [0092] and [0105]-[0113], Decker states that the oil bodies preparation may be formulated in personal care products, skin care products and perfumes. In addition, Decker discloses that natural oils are used with the present invention such as safflower, avocado and jojoba ([0132]). Also, Decker discloses the use of foams in the composition ([0111]).

Stavroff *et al.* (US 5,866,145) discloses using Dead Sea salt, dimethicone and fragrances in a body polisher that contains 50 to 80% Dead Sea salt and .1 to 2.0% fragrance (column 1, lines 32-37; column 2, lines 3-6, 13-17). Applicant's arguments filed August 5, 2005 have been fully considered but they are not persuasive.

Applicant argues that Stavroff use of salt may damage the skin on a woman's face. This is not found persuasive because as stated in column 2, lines 3-6, "an appropriate crystalline size" would be used as in the composition.

Schwartz (US 2002/0012697 A1) discloses the use of Dead Sea salt ([0011]), dimethicone ([0041] and [0042]), jojoba oil ([0045]), a fragrance ([0059]), safflower oil ([0065]) and silica ([0066]). Applicant's arguments filed August 5, 2005 have been fully considered but they are not persuasive.

Applicant argues that Schwartz has nothing whatsoever to do with creating an exfoliating agent. This is not found persuasive as Schwartz disclosed in [0017] the mixture acts as an exfoliating scrub and also provides moisturizer for the skin.

In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, these references show that it was well known in the art at the time of the invention to use the claimed ingredients in compositions for benefiting the skin. It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re* Pinten, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re* Susi, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re* Crockett, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

In response to Applicant's argument that even a combination of all three references, the composition still would not show the unique combination of elements as disclosed in the present invention. This is not found persuasive because since all three references teach using the claimed ingredients, then the ingredients would inherently have the claimed blown up foam effect.

In response to Applicant's argument about optimization effect and not merely an optimization of known ingredients this is not found persuasive as discussed previously. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient through numerous experimentation, to best achieve the desired results.

In response to Applicant's argument that the order in which the invention is set forth in the method claims is the process that the Applicant has created in order to achieve the new and surprising result and synergistic effect of combining the elements to achieve the result of the salt sorbet blown up foam. This is not found persuasive as discussed above the references combined would inherently have this unique blown up foam feature.

Therefore, the rejection is deemed proper and is maintained.

Summary

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

Susan D. Coe
10-13-05
SUSAN COE
PRIMARY EXAMINER